



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

■
Docket No. 4964-22
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) DoDI 1332.29
(c) MILPERSMAN 1920-030
(d) MILPERSMAN 1160-120
(e) MILPERSMAN 1160-040

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to establish service credit from 6 July 2021 to 13 October 2021 and receive Involuntary Separation Pay (ISP).

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 3 August 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. Petitioner's Active Duty Service Date was 6 July 2005; High Year Tenure (HYT) gate 5 July 2021.

b. Petitioner advanced to Aviation Boatswain's Mate (Fuel Handler) (ABF) Second Class/E-5 effective 16 June 2012.

c. On 14 March 2016, Petitioner reenlisted for a term of 4 years.

d. On 26 September 2016, Petitioner reported to [REDACTED] On

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14 April 2018, Petitioner signed NAVPERS 1070/621, Agreement to Extend Enlistment for a term of 19-months "To match expiration of active obligated service (EAOS) with PRD of 2110 in accordance with MILPERSMAN 1160-040." This established EAOS of 13 October 2021.

e. In March 2021, Petitioner participated in the Cycle 251 Navy Wide Advancement Exam and passed not advanced.

f. On 23 June 2021, Petitioner submitted NAVPERS 1306/7, Electronic Personnel Action Request to obtain a Selected Reserve (SELRES) quota for the ABF rating; request was approved by Bureau of Naval Personnel (BUPERS-352).

g. On 13 August 2021, Petitioner issued BUPERS Order: 2251 (Official Separation Orders) indicating Separation Program Designator "MBK" and Effective Date of Separation "13 OCT 2021."

h. On 13 September 2021, Petitioner began terminal leave.

i. Petitioner's Detachment of Individual NAVPERS 1616/26, Evaluation Report & Counseling Record (E1-E6) for period of report 16 March 2021 through 13 October 2021 recommended advancement and retention.

j. On 13 October 2021, Petitioner separated as a result of reaching HYT. At the time of Petitioner's release from active duty, he did not have a Reserve Obligation Termination Date, completed 16 years, 3 months, and 8 days of active duty service, received as Separation Code of "JGH" and Reentry Code of "RE-6."

k. On 5 February 2022, Petitioner was issued a DD Form 215, Correction to DD Form 214, Certificate of Release or Discharge from Active Duty dated 13 October 2021. The correction modified date of separation from 13 October 2021 to 5 July 2021; net active service this period from 16 years, 3 months and 8 days to 16 years, 00 months, and 00 days; and leave paid from 3.5 days to 33.5 days.

l. On 14 March 2022, an indebtedness of \$32,438.02 was posted to Petitioner's pay account as a result of his separation date being changed from 13 October 2021 to 5 July 2021.

m. On 15 March 2022, Defense Finance and Accounting Service (DFAS) credited Petitioner \$69,252.48 of non-disability ISP to Petitioner's pay account; however, he received \$21,578.91, for his separation pay, less indebtedness amount due to the Government.

n. On 2 May 2022, Navy Personnel Command (PERS-97) transferred Petitioner's SELRES affiliation request to PERS-93 at Petitioner's request to change his affiliation request from the SELRES to the Ready Reserve.

o. On 11 July 2022, PERS-93 confirmed Petitioner's eligibility to full ISP and noted that the separation code on DD Form 214 should have been "JBK."

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following corrective action. Petitioner met the eligibility criteria to receive ISP in accordance with references (b)¹ and (c)². However, as a result of administrative oversight, Petitioner served on active duty from 5 July 2021 through 13 October 2021 without an approved HYT waiver as required by references (d)³ and (e)⁴ resulting in retroactive discharge and subsequent indebtedness. Although the proper administrative requirements were not completed, the Board concluded Petitioner's record contains sufficient evidence that he remained working on active duty during this period and should receive compensation for his service from 6 July 2021 through 13 October 2021, therefore, under these circumstances, relief is warranted.

RECOMMENDATION

That Petitioner's naval record be corrected, where appropriate, to show that:

Petitioner's DD Form 215, Correction to DD Form 214, Certificate of Release or Discharge from Active Duty dated 5 February 2022 is null and void.

Petitioner received an HYT waiver from cognizant authority to remain on active duty through 13 October 2021.

Petitioner, in coordination with his command, completed the required Ready Reserve written agreement, NAVPERS 1070/613, Administrative Remarks prior to separation and submitted it to Commander, Navy Personnel Command for inclusion in Petitioner's Official Military Personnel File.

Petitioner prior to separation signed NAVPERS 1070/601, Immediate Reenlistment with an effective date of 14 October 2021 for a term of 3 years.

Petitioner issued DD Form 215, Correction to DD Form 214, Certificate of Release or Discharge from Active Duty dated 13 October 2021 modifying Block 6 (Reserve Obligation Termination Date) "13 October 2024" vice "NA"; Block 26 (Separation Code) "JBK" vice "JGH"; and Block

¹ Reference (b), full payment of non-disability ISP is authorized to Service members who are involuntarily separated from active duty and meet the five specified criteria listed. This criteria includes, eligible Service members must prior to separation, enter into a written agreement to serve in the Ready Reserve for a period of 3 years in addition to any service obligation remaining at the time of separation. Additionally, Service members must sign a mandatory disclosure statement regarding the consequences of collecting retired/retainer pay or Veterans Affairs disability compensation after receiving ISP.

² Reference (c), requires enlisted Sailors to have the Commanding Officer's recommendation for advancement and retention and are required to take and pass the most recent advancement examination before separation to qualify of full separation pay.

³ Reference (d), HYT for Sailors in paygrade E-5 is 16 years length of service. For a Sailor to continue active service beyond their established HYT date, a HYT waiver must be submitted using NAVPERS 1306/7, Enlisted Personnel Action Request, and must arrive at the Bureau of Naval Personnel (BUPERS-32) 10 months prior to their established HYT date.

⁴ Reference (e), Sailors may not extend their enlistments more than 30 days beyond their HYT date without specific approval from BUPERS-328. Additionally, Sailors without a HYT waiver, who are extended beyond HYT, are to be separated at HYT vice their EAOS as extended.

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[REDACTED]

28 (Narrative Reason for Separation) "Completion of Required Active Service" vice "Non-Retention on Active Duty."

Petitioner authorized payment of "Full" ISP based on his 13 October 2021 active duty separation. Note: Petitioner is required to sign a mandatory disclosure statement per reference (b).

Note: DFAS will complete an audit of Petitioner's pay records to determine his entitlement to retroactive pay and allowances.

That no further changes be made to Petitioner's naval record.

That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

8/12/2022

[REDACTED]
Deputy Director
[REDACTED]